



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART III

#### CERTIFICATION OF PENSION SCHEMES AND EFFECTS ON MEMBERS' STATE SCHEME RIGHTS AND DUTIES

#### CHAPTER I

#### CERTIFICATION

#### *Preliminary*

#### **7 Issue of contracting-out<sup>F1</sup>... certificates.**

[<sup>F2</sup>(1) Regulations shall provide for HMRC to issue certificates stating that the employment of an earner in employed earner's employment is contracted-out employment by reference to an occupational pension scheme.]

[<sup>F2</sup>(1A) In this Act such a certificate is referred to as "a contracting-out certificate".]

(2) The regulations shall provide for contracting-out certificates to be issued to employers and to specify—

- (a) the employments which are to be treated, either generally or in relation to any specified description of earners, as contracted-out employments; and
- (b) the occupational pension schemes by reference to which those employments are to be so treated.

[<sup>F3</sup>(2A) The regulations may provide, in the case of contracting-out certificates issued before the principal appointed day, for their cancellation by virtue of the regulations—

- (a) at the end of a prescribed period beginning with that day, or
- (b) if prescribed conditions are not satisfied at any time in that period,

but for them to continue to have effect until so cancelled; and the regulations may provide that a certificate having effect on and after that day by virtue of this subsection

*Status: Point in time view as at 22/04/2014.*

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is to have effect, in relation to any earner’s service on or after that day, as if issued on or after that day.

(2B) In this Part, “the principal appointed day” means the day designated by an order under section 180 of the Pensions Act 1995 as the principal appointed day for the purposes of Part III of that Act]

(3) An occupational pension scheme is a contracted-out scheme in relation to an earner’s employment if it is for the time being specified in a contracting-out certificate in relation to that employment; and references in this Act to the contracting-out of a scheme are references to its inclusion in such a certificate.

<sup>F4</sup>(4) .....

<sup>F4</sup>(5) .....

<sup>F4</sup>(6) .....

(7) Except in prescribed circumstances, no contracting-out certificate <sup>F5</sup>... shall have effect from a date earlier than that on which the certificate is issued.

[<sup>F6</sup>(8) References in this Act to a contracting-out certificate, a contracted-out scheme and to contracting-out in a context relating to a money purchase contracted-out scheme are to be construed in accordance with section 181A.]

#### Textual Amendments

- F1** Words in s. 7 sidenote repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 27(7), 30(2)(b), [Sch. 4 para. 2\(6\)](#), **Sch. 7 Pt. 6** (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F2** [S. 7\(1\)\(1A\)](#) substituted for [s. 7\(1\)](#) (26.9.2007 for specified purposes, 6.4.2012 in so far as not already in force, that being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), **Sch. 4 para. 2(2)** (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F3** [S. 7\(2A\)\(2B\)](#) inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 136(1)**, 180(1); S.I. 1996/778, art. 2(5)(a)(7), [Sch. Pt. 5](#)
- F4** [S. 7\(4\)-\(6\)](#) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 27(7), 30(2)(b), [Sch. 4 para. 2\(3\)](#), **Sch. 7 Pt. 6** (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F5** Words in [s. 7\(7\)](#) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 27(7), 30(2)(b), [Sch. 4 para. 2\(4\)](#), **Sch. 7 Pt. 6** (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F6** [S. 7\(8\)](#) inserted (26.9.2007 for specified purposes, 6.4.2012 in so far as not already in force, that being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), **Sch. 4 para. 2(5)** (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)

#### Modifications etc. (not altering text)

- C1** [S. 7\(2\)](#) extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **12(3)**, 13(2), 14
- C2** [S. 7\(7\)](#) extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **12(3)**, 13(2), 14

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

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## 8 Meaning of “contracted-out employment”, “guaranteed minimum pension” and “minimum payment”.

- (1) The employment of an earner in employed earner's employment is “contracted-out employment” in relation to him during any period in which<sup>[F7]</sup>—
- (a) he is under pensionable age;
  - (aa) his service in the employment is for the time being service which qualifies him for a pension provided by an occupational pension scheme contracted out by virtue of satisfying section 9(2) (in this Act referred to as “a salary related contracted-out scheme”);]
  - (b) there is in force a contracting-out certificate issued by the <sup>[F8]</sup>Inland Revenue] in accordance with this Chapter stating that the employment is contracted-out employment by reference to the scheme.

<sup>[F9]</sup>(1A) In addition, in relation to any period before the abolition date, the employment of an earner in employed earner's employment was “contracted-out employment” in relation to him during that period if—

- (a) he was under pensionable age;
- (b) his employer made minimum payments in respect of his employment to a money purchase contracted-out scheme, and
- (c) there was in force a contracting-out certificate issued in accordance with this Chapter (as it then had effect) stating that the employment was contracted-out employment by reference to the scheme.]

(2) In this Act—

“guaranteed minimum pension” means any pension which is provided by an occupational pension scheme in accordance with the requirements of sections 13 and 17 to the extent to which its weekly rate is equal to the earner's or, as the case may be, the earner's <sup>[F10]</sup>widow's, widower's <sup>[F11]</sup>, surviving same sex spouse's] or surviving civil partner's] guaranteed minimum as determined for the purposes of those sections respectively; and

“minimum payment”, in relation to an earner's employment in any tax week, means the rebate percentage of so much of the earnings paid to or for the benefit of the earner in that week as exceeds the current lower earnings limit but not <sup>[F12]</sup>the applicable limit] (or the prescribed equivalents if he is paid otherwise than weekly);

<sup>[F13]</sup>and for the purposes of this subsection “rebate percentage” means the appropriate flat rate percentage <sup>[F14]</sup>for the tax year in which the week falls as specified in an order made under section 42B (as it had effect before the abolition date)]].

<sup>[F15]</sup>(2A) In subsection (2) “the applicable limit” means—

- (a) in relation to a tax year before 2009-10, the upper earnings limit;
- (b) in relation to 2009-10 or any subsequent tax year, the upper accrual point.]

(3) Regulations may make provision—

- (a) for the manner in which, and time at which or period within which, minimum payments are to be made;
- (b) for the recovery by employers of amounts in respect of the whole or part of minimum payments by deduction from earnings;
- (c) for calculating the amounts payable according to a scale prepared from time to time by the Secretary of State or otherwise adjusting them so as to avoid fractional amounts or otherwise facilitate computation;

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- (d) for requiring that the liability in respect of a payment made in a tax week, in so far as the liability depends on any conditions as to a person's age on retirement, shall be determined as at the beginning of the week or as at the end of it;
  - (e) for securing that liability is not avoided or reduced by the payment of earnings being made in accordance with any practice which is abnormal for the employment in respect of which the earnings are paid;
  - (f) without prejudice to paragraph (e), for enabling the [<sup>F16</sup>Inland Revenue], where [<sup>F16</sup>they are] satisfied as to the existence of any practice in respect of the payment of earnings whereby the incidence of minimum payments is avoided or reduced by means of irregular or unequal payments of earnings, to give directions for securing that minimum payments are payable as if that practice were not followed;
  - (g) for the intervals at which, for the purposes of minimum payments, payments of earnings are to be treated as made; and
  - (h) for this section to have effect, in prescribed cases, as if for any reference to a tax week there were substituted a reference to a prescribed period.
- (4) Any contracting-out certificate for the time being in force in respect of an employed earner's employment shall be conclusive that the employment is contracted-out employment.

<sup>F17</sup>(5) .....

#### Textual Amendments

- F7** Words in s. 8(1) substituted (26.9.2007 for specified purposes, 6.4.2012 in so far as not already in force, that being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), [Sch. 4 para. 3\(2\)](#) (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)
- F8** Words in s. 8(1)(b) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 34\(a\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F9** S. 8(1A) inserted (26.9.2007 for specified purposes, 6.4.2012 in so far as not already in force, that being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), [Sch. 4 para. 3\(3\)](#) (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)
- F10** Words in s. 8(2) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), [Sch. 1 para. 1](#)
- F11** Words in s. 8(2) inserted (13.3.2014) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 19](#); S.I. 2014/93, art. 3(j)(v)
- F12** Words in s. 8(2) substituted (21.9.2008) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), [Sch. 1 para. 8\(2\)](#)
- F13** Words in s. 8(2) substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 23\(a\)](#); S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F14** Words in s. 8(2) substituted (26.9.2007 for specified purposes, 6.4.2012 in so far as not already in force, that being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), [Sch. 4 para. 3\(4\)](#) (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)
- F15** S. 8(2A) inserted (21.9.2008) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), [Sch. 1 para. 8\(3\)](#)
- F16** Words in s. 8(3)(f) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 34\(b\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

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**F17** S. 8(5) repealed (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 23(b), **Sch. 7 Pt. III**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2**

**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

*General requirements for certification*

**9 Requirements for certification of schemes: general.**

(1) Subject to subsection (4), an occupational pension scheme can be contracted-out in relation to an earner's employment only if it satisfies subsection (2) <sup>F18</sup> ... .

<sup>F19</sup>(2) An occupational pension scheme satisfies this subsection only if—

- (a) in relation to any earner's service before the principal appointed day, it satisfies the conditions of subsection (2A), and
- (b) in relation to any earner's service on or after that day, it satisfies the conditions of subsection (2B).

(2A) The conditions of this subsection are that—

- (a) the scheme complies in all respects with <sup>F20</sup>sections 13 to 24E] or, in such cases or classes of case as may be prescribed, with those sections as modified by regulations, and
- (b) the rules of the scheme applying to guaranteed minimum pensions are framed so as to comply with the relevant requirements.

(2B) The conditions of this subsection are that the <sup>F21</sup>Inland Revenue][<sup>F22</sup>are satisfied] that—

- (a) the scheme complies with section 12A,
- (b) restrictions imposed under section 40 of the Pensions Act 1995 (restriction on employer-related investments) apply to the scheme and the scheme complies with those restrictions,
- (c) the scheme satisfies such other requirements as may be prescribed (which—
  - (i) must include requirements as to the amount of the resources of the scheme and,
  - (ii) may include a requirement that, if the only members of the scheme were those falling within any prescribed class or description, the scheme would comply with section 12A); and
- (d) the scheme does not fall within a prescribed class or description,

and <sup>F22</sup>are satisfied] that the rules of the scheme are framed so as to comply with the relevant requirements.

(2C) Regulations may modify subsection (2B)(a) and (b) in their application to occupational pension schemes falling within a prescribed class or description.]

<sup>F23</sup>(3) .....

(4) Where there are two or more occupational pension schemes in force in relation to an earner's employment, none of which can by itself be a contracted-out scheme, the <sup>F24</sup>Inland Revenue may, if they think] fit, treat them for contracting-out purposes as a single scheme.

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<sup>F25</sup>(5) .....

[<sup>F26</sup>(5A) Regulations about pension schemes made under this Chapter may contain provisions framed by reference to whether or not a scheme [<sup>F27</sup>is a registered pension scheme under section 153 of the Finance Act 2004].]

(6) In this section “relevant requirements” means—

- (a) the requirements of any regulations prescribing the form and content of rules of contracted-out <sup>F28</sup>... schemes; and
- (b) such other requirements as to form and content (not inconsistent with regulations) as may be imposed by the [<sup>F29</sup>Secretary of State] as a condition of contracting-out <sup>F30</sup>... either generally or in relation to a particular scheme.

#### Textual Amendments

- F18** Words in s. 9(1) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 4(2), **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)
- F19** S. 9(2)-(2C) substituted for s. 9(2) (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), **ss. 136(3)**, 180(1); S.I. 1996/778, art. 2(5)(a)(7), **Sch. Pt. V**
- F20** Words in s. 9(2A) substituted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), **ss. 14(4)**, 30(2)(a); S.I. 2009/406, art. 2(a)(b)
- F21** Words in s. 9(2B) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 35(2)(a)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F22** Words in s. 9(2B) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 35(2)(b)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F23** S. 9(3) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 4(3), **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)
- F24** Words in s. 9(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 35(4)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F25** S. 9(5) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 4(3), **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)
- F26** S. 9(5A) inserted (1.7.2005) by Pensions Act 2004 (c. 35), **ss. 283**, 322(1) (with s. 313); S.I. 2005/1720, art. 2(9)
- F27** Words in s. 9(5A) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **7(2)**
- F28** Words in s. 9(6)(a) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 4(4)(a), **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)
- F29** Words in s. 9 substituted (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 21**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**
- F30** Words in s. 9(6)(b) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 4(4)(b), **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)

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#### Modifications etc. (not altering text)

- C3** S. 9 excluded (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), [ss. 149\(1\)](#), [180\(1\)](#); [S.I. 1996/778](#), art. 2(6); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2
- C4** S. 9(2) excluded (6.4.1997) by [The Occupational Pension Schemes \(Mixed Benefit Contracted-out Schemes\) Regulations 1996 \(S.I. 1996/1977\)](#), regs. 1(1), [2\(3\)](#)
- C5** S. 9(2B) modified (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), [27](#)
- C6** S. 9(2B)(b) modified (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), [48\(5\)\(d\)](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

### <sup>F31</sup> 10 Protected rights and money purchase benefits.

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#### Textual Amendments

- F31** S. 10 repealed (6.4.2012) by [Pensions Act 2008 \(c. 30\)](#), [ss. 106\(1\)\(3\)\(a\)\(4\)](#), [149\(1\)](#), [Sch. 11 Pt. 3](#); [S.I. 2011/1266](#), [art. 2\(c\)](#)

### 11 Elections as to employments covered by contracting-out certificates.

- (1) Subject to the provisions of this Part, an employment otherwise satisfying the conditions for inclusion in a contracting-out certificate shall be so included if and so long as the employer so elects and not otherwise.
- (2) Subject to subsections (3) and (4), an election may be so made, and an employment so included, either generally or in relation only to a particular description of earners.
- (3) Except in such cases as may be prescribed, an employer shall not, in making or abstaining from making any election under this section, discriminate between different earners on any grounds other than the nature of their employment.
- (4) If the [<sup>F32</sup>Inland Revenue consider] that an employer is contravening subsection (3) in relation to any scheme, [<sup>F33</sup>they] may—
  - (a) refuse to give effect to any election made by him in relation to that scheme; or
  - (b) cancel any contracting-out certificate held by him in respect of it.
- (5) Regulations may make provision—
  - (a) for regulating the manner in which an employer is to make an election with a view to the issue, variation or surrender of a contracting-out certificate;
  - (b) for requiring an employer to give a notice of his intentions in respect of making or abstaining from making any such election in relation to any existing or proposed scheme—
    - (i) to employees in any employment to which the scheme applies or to which it is proposed that it should apply;
    - (ii) to any independent trade union recognised to any extent for the purpose of collective bargaining in relation to those employees;
    - (iii) to the trustees and managers of the scheme; and

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- (iv) to such other persons as may be prescribed;
- (c) for requiring an employer, in connection with any such notice, to furnish such information as may be prescribed and to undertake such consultations as may be prescribed with any such trade union as is mentioned in paragraph (b)(ii);
- (d) for empowering the [<sup>F34</sup>Inland Revenue] to refuse to give effect to an election made by an employer unless [<sup>F34</sup>they are] satisfied that he has complied with the requirements of the regulations;
- (e) for referring to an industrial tribunal any question—
  - (i) whether an organisation is such a trade union as is mentioned in paragraph (b)(ii), or
  - (ii) whether the requirements of the regulations as to consultation have been complied with.

#### Textual Amendments

- F32** Words in s. 11(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 37\(2\)\(a\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F33** Word in s. 11(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 37\(2\)\(b\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F34** Words in s. 11(5)(d) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 37\(3\)](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

#### Modifications etc. (not altering text)

- C7** S. 11 extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\), regs. 1\(1\), 12\(3\), 13\(2\), 14](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

### <sup>F35</sup>12 Determination of basis on which scheme is contracted-out.

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#### Textual Amendments

- F35** S. 12 repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\), ss. 15\(4\), 27\(7\), 30\(2\)\(b\), Sch. 4 para. 6, Sch. 7 Pt. 6](#) (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)



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*[<sup>F36</sup>Requirements for certification of occupational pension schemes  
applying from the principal appointed day of the Pensions Act 1995*

**Textual Amendments**

**F36** Ss. 12A-12D and cross-heading inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 136(5), 180(1)**; [S.I. 1996/778](#), art. 2(5)(a)(7), Sch. Pt. 5

**12A The statutory standard**

- (1) Subject to the provisions of this Part, the scheme must, in relation to the provision of pensions for earners in employed earner's employment, and for their [<sup>F37</sup>widows, widowers or surviving civil partners], satisfy the statutory standard.
- (2) Subject to regulations made by virtue of section 9(2B)(c)(ii), in applying this section regard must only be had to—
  - (a) earners in employed earner's employment, or
  - (b) their [<sup>F38</sup>widows, widowers or surviving civil partners],collectively, and the pensions to be provided for persons falling within paragraph (a) or (b) must be considered as a whole.
- (3) For the purposes of this section, a scheme satisfies the statutory standard if the pensions to be provided for such persons are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (4) Regulations may provide for the manner of, and criteria for, determining whether the pensions to be provided for such persons under a scheme are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.
- (5) Regulations made by virtue of subsection (4) may provide for the determination to be made in accordance with guidance prepared from time to time by a prescribed body <sup>F39</sup>  
...
- (6) The pensions to be provided for such persons under a scheme are to be treated as broadly equivalent to or better than the pensions which would be provided for such persons under a reference scheme if and only if an actuary (who, except in prescribed circumstances, must be the actuary appointed for the scheme in pursuance of section 47 of the Pensions Act 1995) so certifies.

**Textual Amendments**

- F37** Words in s. 12A(1) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), **Sch. 1 para. 2**
- F38** Words in s. 12A(2)(b) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), **Sch. 1 para. 2**
- F39** Words in s. 12A(5) repealed (1.11.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(2), Sch. 5 para. 5, **Sch. 7 Pt. 8**; [S.I. 2007/3063](#), art. 2(b)(c)

*Status: Point in time view as at 22/04/2014.*

*Changes to legislation: Pension Schemes Act 1993, Chapter I is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **12B Reference scheme**

- (1) This section applies for the purposes of section 12A.
- (2) A reference scheme is an occupational pension scheme which—
  - (a) complies with each of subsections (3) and (4), and
  - (b) complies with any prescribed requirements.
- (3) In relation to earners employed in employed earner’s employment, a reference scheme is one which provides—
  - (a) for them to be entitled to a pension under the scheme commencing at a normal pension age of 65 and continuing for life, and
  - (b) for the annual rate of the pension at that age to be—
    - (i) 1/80th of average qualifying earnings in the last three tax years preceding the end of service,  
multiplied by
    - (ii) the number of years service, not exceeding such number as would produce an annual rate equal to half the earnings on which it is calculated.
- (4) In relation to [<sup>F40</sup>widows, widowers or surviving civil partners], a reference scheme is one which provides—
  - (a) for the [<sup>F40</sup>widows, widowers or surviving civil partners] of earners employed in employed earner’s employment (whether the earners die before or after attaining the age of 65) to be entitled, except in prescribed circumstances, to pensions under the scheme, and
  - [<sup>F41</sup>(b) for entitlements to those pensions to commence on the day following the death of the earners, and
  - (c) except in prescribed circumstances, for the annual rate of those pensions to be—
    - (i) if the earners die on or after their normal pension age, 50 per cent. of the annual rate which a reference scheme was required to provide to the deceased earners immediately before their death, or
    - (ii) if the earners die before their normal pension age, 50 per cent. of the annual rate which a reference scheme would have been required to provide to the deceased earners if the date of their death had been their normal pension age, and
  - (d) if those pensions are payable in respect of earners who die—
    - (i) otherwise than in pensionable service under the scheme, and
    - (ii) before their own entitlements to pensions under the scheme have commenced,  
for those pensions to be revalued in accordance with section 84 as though they were such benefits as are mentioned in section 83(1)(a).]
- (5) For the purposes of this section, an earner’s qualifying earnings in any tax year are 90 per cent. of the amount by which the earner’s earnings—
  - (a) exceed the qualifying earnings factor for that year, and
  - (b) do not exceed [<sup>F42</sup>the applicable limit].
- (6) Regulations may modify subsections (2) to (5).
- (7) In this section—

*Status: Point in time view as at 22/04/2014.*

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[<sup>F43</sup>“the applicable limit” means—

- (a) in relation to a tax year before [<sup>F44</sup>2009-10], the upper earnings limit for the year multiplied by 53;
- (b) in relation to [<sup>F44</sup>2009-10] or any subsequent tax year, the upper accrual point [<sup>F45</sup>multiplied by 53];]

“normal pension age”, in relation to a scheme, means the age specified in the scheme as the earliest age at which pension becomes payable under the scheme (apart from any special provision as to early retirement on grounds of ill-health or otherwise),

“qualifying earnings factor”, in relation to a tax year, has the meaning given by section 122(1) of the Social Security Contributions and Benefits Act 1992, and

“upper earnings limit”, in relation to a tax year, means the amount specified for that year by regulations made by virtue of section 5(3) of that Act as the upper earnings limit for Class 1 contributions.

#### Textual Amendments

- F40** Words in s. 12B(4) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), [Sch. 1 para. 3](#)
- F41** Ss. 12B(4)(b)-(d) substituted for s. 12B(4)(b) (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/819\)](#), regs. 1(1), 2
- F42** Words in s. 12B(5)(b) substituted (26.9.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(3), [Sch. 1 para. 36\(a\)](#)
- F43** Words in s. 12B(7) inserted (26.9.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(3), [Sch. 1 para. 36\(b\)](#)
- F44** Words in s. 12B(7) substituted (21.9.2008) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), [Sch. 1 para. 9\(a\)](#)
- F45** Words in s. 12B(7) inserted (21.9.2008) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), [Sch. 1 para. 9\(b\)](#)

## 12C Transfer, commutation, etc

- (1) Regulations may prohibit or restrict—
  - (a) the transfer of any liability—
    - (i) for the payment of pensions under a relevant scheme, or
    - (ii) in respect of accrued rights to such pensions,
  - (b) the discharge of any liability to provide pensions under a relevant scheme, or
  - (c) the payment of a lump sum instead of a pension payable under a relevant scheme,except in prescribed circumstances or on prescribed conditions.
- (2) In this section “relevant scheme” means a scheme contracted out by virtue of section 9(2B) of this Act and references to pensions and accrued rights under the scheme are to such pensions and rights so far as attributable to an earner’s service on or after the principal appointed day.
- (3) Regulations under subsection (1) may provide that any provision of this Part shall have effect subject to such modifications as may be specified in the regulations.

*Status: Point in time view as at 22/04/2014.*

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**Modifications etc. (not altering text)**

- C8** S. 12C applied (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\)](#), regs. 1, **58(5)(6)**
- C9** S. 12C(1) extended (with modifications) (6.4.1997) by [The Occupational Pension Schemes \(Discharge of Liability\) Regulations 1997 \(S.I. 1997/784\)](#), regs. 1(1), **11(3)(e)(6)**

**12D Entitlement to benefit**

In the case of a scheme contracted out by virtue of section 9(2B) of this Act, regulations may make provision as to the ages by reference to which benefits under the scheme are to be paid]

*Requirements for certification of occupational pension schemes providing guaranteed minimum pensions*

**13 Minimum pensions for earners.**

- (1) Subject to the provisions of this Part, the scheme must—
- (a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and
  - (b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum (if any) under sections 14 to 16.

[<sup>F46</sup>(1A) But a scheme may be amended so as to omit provision of the kind specified in subsection (1)(a) and (b) if the conditions specified in section 24B are satisfied.]

- (2) In the case of an earner who is a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the <sup>M1</sup>Social Security Contributions and Benefits Act 1992, subject to the provisions of this Part, the scheme must—
- (a) provide for her to be entitled to a pension under the scheme if she attains pensionable age<sup>F47</sup>...; and
  - (b) satisfy such other conditions as may be prescribed.
- (3) Subject to subsection (4), the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.
- (4) Subject to subsection (5), the scheme may provide for the commencement of the earner’s guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age.
- (5) The scheme must provide for the earner’s consent to be required—
- (a) for any such postponement by virtue of employment to which the scheme does not relate; and
  - (b) for any such postponement after the expiration of five years from the date on which he attains pensionable age.
- (6) Equivalent pension benefits for the purposes of the former legislation are not to be regarded as constituting any part of the earner’s guaranteed minimum pension.

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- (7) The benefits referred to in subsection (6) are any to which the earner may be immediately or prospectively entitled in respect of a period of employment which—
  - (a) was for him non-participating employment under that legislation; and
  - (b) was not on its termination the subject of any payment in lieu of contributions;
 but subsection (6) excludes only so much of those benefits as had to be provided in order that the employment should for that period be treated as non-participating.
- (8) In this section “the former legislation” means Part III of the <sup>M2</sup>National Insurance Act 1965 and the previous corresponding enactments.

**Textual Amendments**

**F46** S. 13(1A) inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(1), 30(2)(a); S.I. 2009/406, art. 2(a)(b)

**F47** Words in s. 13(2)(a) repealed (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 26, Sch. 7 Pt. III; S.I. 1997/664, art. 2(3), Sch. Pt. 2

**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, art. 2

**Marginal Citations**

**M1** 1992 c. 4.

**M2** 1965 c. 51.

**14 Earner’s guaranteed minimum.**

- (1) An earner has a guaranteed minimum in relation to the pension provided by a scheme if in any tax week in a relevant year, earnings in excess of the current lower earnings limit (or the prescribed equivalent if he is paid otherwise than weekly) have been paid to or for his benefit in respect of employment which is contracted-out by reference to the scheme.
- (2) Subject to section 15(1), the guaranteed minimum shall be the weekly equivalent of an amount equal to the appropriate percentage of the total of the earner’s earnings factors for the relevant years, so far as derived from earnings such as are mentioned in subsection (1) upon which primary Class 1 contributions have been paid or treated as paid.
- <sup>F48</sup>(2A) Where any liability of a scheme in respect of an earner’s guaranteed minimum pension ceases by virtue of a civil recovery order, his guaranteed minimum in relation to the scheme is extinguished or reduced accordingly.]
- <sup>F49</sup>(3) .....
- (4) Where the amount of a person’s earnings for any period is relevant for any purpose of subsection (1) or (2) and the <sup>F50</sup>Inland Revenue are] satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, <sup>F51</sup>they] may for that purpose—
  - (a) compute, in such manner as <sup>F51</sup>they][<sup>F52</sup>think] fit, an amount which shall be regarded as the amount of those earnings; or
  - (b) take their amount to be such sum as <sup>F51</sup>he][<sup>F51</sup>they] may specify in the particular case.

*Status: Point in time view as at 22/04/2014.*

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- (5) In subsection (2) the “appropriate percentage” means—
- (a) in respect of the earner’s earnings factors for any tax year not later than the tax year 1987-88—
    - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1.25 per cent.;
    - (ii) in any other case 25/N per cent.;
  - (b) in respect of the earner’s earnings factors for the tax year 1988-89 and for subsequent tax years—
    - (i) if the earner was not more than 20 years under pensionable age on 6th April 1978, 1 per cent.;
    - (ii) in any other case 20/N per cent.;
- where N is the number of years in the earner’s working life (assuming he will attain pensionable age) which fall after 5th April 1978.
- (6) Regulations may prescribe rules as to the circumstances in which earnings factors are derived from earnings for the purposes of subsection (2).
- (7) For the purposes of subsection (2) the weekly equivalent of the amount there mentioned shall be calculated by dividing that amount by 52.
- (8) In this section “relevant year” means any tax year in the earner’s working life (not being earlier than the tax year 1978-79 [<sup>F53</sup>or later than the tax year ending immediately before the principal appointed day]).

#### Textual Amendments

- F48** S. 14(2A) inserted (24.2.2003) by [Proceeds of Crime Act 2002 \(c. 29\), s. 458\(1\), Sch. 11 para. 22\(3\); S.I. 2003/120, art. 2, Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333, art. 14](#))
- F49** S. 14(3) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 27\(a\), Sch. 7 Pt. III; S.I. 1997/664, art. 2\(3\), Sch. Pt. 2](#)
- F50** Words in s. 14(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 38\(a\); S.I. 1999/527, art. 2\(b\), Sch. 2 \(with arts. 3-6\)](#)
- F51** Word in s. 14(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 38\(b\); S.I. 1999/527, art. 2\(b\), Sch. 2 \(with arts. 3-6\)](#)
- F52** Word in s. 14(4)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 38\(c\); S.I. 1999/527, art. 2\(b\), Sch. 2 \(with arts. 3-6\)](#)
- F53** Words in s. 14(8) inserted (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 27\(b\); S.I. 1997/664, art. 2\(3\), Sch. Pt. 2](#)

#### Modifications etc. (not altering text)

- C10** S. 14(1) applied (with modifications) (6.4.1997) by [The Protected Rights \(Transfer Payment\) Regulations 1996 \(S.I. 1996/1461\), regs. 1\(1\), 6\(4\)](#)
- C11** S. 14(2) modified (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\), regs. 1, 36\(1\)](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

*Status: Point in time view as at 22/04/2014.*

*Changes to legislation: Pension Schemes Act 1993, Chapter I is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **15 Increase of guaranteed minimum where commencement of guaranteed minimum pension postponed.**

- (1) Where in accordance with section 13(4) the commencement of an earner's guaranteed minimum pension is postponed for any period and there are at least seven complete weeks in that period, his guaranteed minimum in relation to the scheme shall, for each complete week in that period, be increased by one-seventh per cent.—
  - (a) of the amount of that minimum apart from this subsection; or
  - (b) if for that week (or a period which includes that week) a pension is paid to him under the scheme at a weekly rate less than that minimum, of the difference between that pension and that minimum.
- (2) In subsection (1) “week” means any period of seven consecutive days.
- (3) Where an earner's guaranteed minimum is increased under subsection (1), the increase of that part of it which is attributable to earnings factors for the tax year 1987-88 and earlier tax years shall be calculated separately from the increase of the rest.
- (4) Where one or more orders have come into force under section 109 during the period for which the commencement of a guaranteed minimum pension is postponed, the amount of the guaranteed minimum for any week in that period shall be determined as if the order or orders had come into force before the beginning of the period.

### **Modifications etc. (not altering text)**

**C12** S. 15 applied (6.4.2005) by [The Armed Forces Pension Scheme Order 2005 \(S.I. 2005/438\)](#), [art. 1](#), [Sch. 1 rule D.17\(5\)](#)

**C13** S. 15(1): sums payable amended (with effect in accordance with arts. 1(4), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2014 \(S.I. 2014/516\)](#), [arts. 1\(2\)\(c\)\(i\)\(3\)](#), [5\(2\)](#)

### **Commencement Information**

**I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

## **[<sup>F54</sup>15A Reduction of guaranteed minimum in consequence of pension debit.**

- (1) Where—
  - (a) an earner has a guaranteed minimum in relation to the pension provided by a scheme, and
  - (b) his right to the pension becomes subject to a pension debit,his guaranteed minimum in relation to the scheme is, subject to subsection (2), reduced by the appropriate percentage.
- (2) Where the earner is in pensionable service under the scheme on the day on which the order or provision on which the pension debit depends takes effect, his guaranteed minimum in relation to the scheme is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.
- (3) For the purposes of subsection (2), the corresponding qualifying benefit is the guaranteed minimum taken for the purpose of calculating the cash equivalent by reference to which the amount of the pension debit is determined.
- (4) For the purposes of this section the appropriate percentage is—

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- (a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;
- (b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the Welfare Reform and Pensions Act 1999 (lesser of specified amount and cash equivalent of transferor’s benefits) represents of the amount mentioned in subsection (3)(b) of that section (cash equivalent of transferor’s benefits).]

#### Textual Amendments

**F54** S. 15A inserted (11.11.1999 for specified purposes, 1.12.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), ss. **32(3)**, 89(5)(a); S.I. 2000/1047, art. 2(2)(d), Sch. Pt. 4

#### Modifications etc. (not altering text)

**C14** S. 15A applied (with effect in accordance with art. 1(2) of the amending S.S.I.) by SI 1992/129 Sch. 2 rule N6 (as inserted by The Firemens Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001 (S.S.I. 2001/310), arts. 1(2), 3)

**C15** S. 15A applied (with effect in accordance with reg. 1(2) of the amending S.S.I.) by the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365), reg. **W6** (as inserted by S.S.I. 2001/465, reg. 1(2), sch. 1 para. 3)

## 16 Revaluation of earnings factors for purposes of s. 14: early leavers etc.

- (1) Subject to subsection (2), for the purpose of section 14(2) the earner’s earnings factor for any relevant year (so far as derived as mentioned in that section) shall be taken to be that factor as increased by the same percentage as that prescribed for the increase of that factor by the last order under section 21 of the <sup>M3</sup>Social Security Pensions Act 1975 or section 148 of the <sup>M4</sup>Social Security Administration Act 1992 to come into force before the end of the final relevant year.
- (2) The scheme may provide that the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before the final relevant year shall be determined for the purposes of section 14(2) by reference to the last such order to come into force before the end of the tax year in which that service ends (“the last service tax year”).
- (3) Where a scheme provides as mentioned in subsection (2) the scheme shall provide for the weekly equivalent mentioned in section 14(2) to be increased by at least [<sup>F55</sup>the prescribed percentage for each relevant year after the last service tax year; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed].
- (4) Except in such cases or classes of case as may be prescribed, the provision made by virtue of subsections (2) and (3) must be the same for all members of the scheme.
- (5) In this section—
  - [<sup>F56</sup>“relevant year” means any tax year in the earner’s working life.]
  - [<sup>F57</sup>“final relevant year” means the last tax year in the earner’s working life].



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### Textual Amendments

- F55** Words in s. 16(3) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 28(a)**; S.I. 1996/778, art. 2(5)(a), **Sch. Pt. 5**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2** (with art. 3)
- F56** Words in s. 16(5) substituted (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(5)(a), **Sch. 2 para. 4**; S.I. 2000/1047, art. 2(2)(b), **Sch. Pt. 2**
- F57** Words in s. 16(5) substituted (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 28(b)**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2**

### Modifications etc. (not altering text)

- C16** S. 16 modified (6.4.1997) by Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172), regs. 1(1), **65**, **66**
- C17** S. 16(1) applied (with modifications) (6.4.1997) by The Protected Rights (Transfer Payment) Regulations 1996 (S.I. 1996/1461), regs. 1(1), **6(5)**
- C18** S. 16(2) applied (6.4.1997) by The Protected Rights (Transfer Payment) Regulations 1996 (S.I. 1996/1461), regs. 1(1), **6(6)**

### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

### Marginal Citations

- M3** 1975 c. 60.
- M4** 1992 c. 5.

## 17 Minimum pensions for widows and widowers.

- (1) Subject to the provisions of this Part, the scheme must provide that if the earner dies leaving a [<sup>F58</sup>widow, widower or surviving civil partner] (whether before or after attaining pensionable age), the [<sup>F58</sup>widow, widower or surviving civil partner] will be entitled to a guaranteed minimum pension under the scheme.
- [<sup>F59</sup>(1A) But a scheme may be amended so as to omit provision of the kind specified in subsection (1) if the conditions specified in section 24B are satisfied.]
- (2) The scheme must contain a rule to the effect that—
- (a) if the earner is a man [<sup>F60</sup>, or a woman in a relevant gender change case,] who has a guaranteed minimum under section 14, the weekly rate of the widow's pension will be not less than the widow's guaranteed minimum;
  - (b) if the earner is a woman who has a guaranteed minimum under that section, the weekly rate of the widower's pension will be not less than the widower's guaranteed minimum;
  - [<sup>F61</sup>(c) if the earner is a person who has a guaranteed minimum under that section, the weekly rate of the surviving civil partner's pension will not be less than the surviving civil partner's guaranteed minimum;]
  - [<sup>F62</sup>(d) if the earner is a man who has a guaranteed minimum under that section, the weekly rate of the widower's pension will not be less than the surviving same sex spouse's guaranteed minimum;
  - (e) if the earner is a woman (other than in a relevant gender change case) who has a guaranteed minimum under that section, the weekly rate of the widow's

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pension will not be less than the surviving same sex spouse's guaranteed minimum.]

- (3) The widow's guaranteed minimum shall be half that of the earner.
- (4) The widower's [<sup>F63</sup>or surviving civil partner's][<sup>F64</sup>or surviving same sex spouse's] guaranteed minimum shall be one-half of that part of the earner's guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years.
- [<sup>F65</sup>(4A) [<sup>F66</sup>Subject to subsection (4B)] the scheme must provide for the [<sup>F67</sup>widow's, widower's or surviving civil partner's] pension to be payable to the [<sup>F68</sup>widow, widower or surviving civil partner]—
- (a) for any period for which a Category B retirement pension is payable to the [<sup>F68</sup>widow, widower or surviving civil partner] by virtue of the earner's contributions or would be so payable but for section 43(1) of the Social Security Contributions and Benefits Act 1992 (persons entitled to more than one retirement pension);
  - (b) for any period for which widowed parent's allowance or bereavement allowance is payable to the [<sup>F68</sup>widow, widower or surviving civil partner] by virtue of the earner's contributions; and
  - (c) in the case of a [<sup>F68</sup>widow, widower or surviving civil partner] whose entitlement by virtue of the earner's contributions to a widowed parent's allowance or bereavement allowance has come to an end at a time after the [<sup>F68</sup>widow, widower or surviving civil partner] attained the age of 45, for so much of the period beginning with the time when the entitlement came to an end as neither—
    - [ comprises a period during which the widow, widower or surviving <sup>F69</sup>(i) civil partner and —
    - [<sup>F70</sup>another person are living together as a married couple;] nor
      - (ii) falls after the time of any—
        - (a) marriage; or
        - (b) formation of a civil partnership,

by the widow or widower or surviving civil partner which takes place after the earner's death.]]
- [<sup>F71</sup>(4B) Sub-paragraphs (i)(b) and (ii)(b) of subsection (4A)(c) do not apply where the earner dies before 5th December 2005.]
- (5) [<sup>F72</sup>In the case of a woman who is the widow of a man,] the scheme [<sup>F73</sup>must also make provision] for the widow's pension to be payable to her for any period for which a <sup>F74</sup>... widowed mother's allowance or widow's pension is payable to her by virtue of the earner's contributions<sup>F74</sup>....
- (6) [<sup>F75</sup>In any other case,] the scheme [<sup>F76</sup>must also make provision] for the [<sup>F77</sup>widower's [<sup>F78</sup>, widow's] or surviving civil partner's pension to be payable] in the prescribed circumstances and for the prescribed period.
- (7) The trustees or managers of the scheme shall supply to the [<sup>F79</sup>Inland Revenue] any such information as [<sup>F79</sup>the Inland Revenue] may require relating to the payment of pensions under the scheme to [<sup>F80</sup>widows, widowers or surviving civil partners].
- [<sup>F81</sup>(8) Where—

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- (a) a lump sum is paid to an earner under provisions included in a scheme by virtue of section 21(1), and
  - (b) those provisions are of a prescribed description,
- the earner shall be treated for the purposes of this section as having any guaranteed minimum under section 14 that he would have had but for that payment.]
- [<sup>F82</sup>(9) [<sup>F83</sup>For the purposes of subsection (4A), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.]]
- [<sup>F84</sup>(10) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.
- (11) This section is subject to regulations under section 38A.]

#### Textual Amendments

- F58** Words in s. 17(1) substituted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(2)(3), [Sch. 1 para. 4\(a\)](#)
- F59** S. 17(1A) inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by [Pensions Act 2007 \(c. 22\)](#), [ss. 14\(2\)](#), 30(2)(a); S.I. 2009/406, art. 2(a)(b)
- F60** Words in s. 17(2)(a) inserted (E.W.) (13.3.2014 for specified purposes, 10.12.2014 in so far as not already in force) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 20\(2\)\(a\)](#); S.I. 2014/93, [art. 3\(j\)\(vi\)](#)
- F61** S. 17(2)(c) added (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(2)(3), [Sch. 1 para. 4\(b\)](#)
- F62** S. 17(2)(d)(e) inserted (E.W.) (13.3.2014 for specified purposes, 10.12.2014 in so far as not already in force) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 20\(2\)\(b\)](#); S.I. 2014/93, [art. 3\(j\)\(vi\)](#)
- F63** Words in s. 17(4) inserted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(2)(3), [Sch. 1 para. 4\(c\)](#)
- F64** Words in s. 17(4) inserted (E.W.) (13.3.2014 for specified purposes, 10.12.2014 in so far as not already in force) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\)](#), s. 21(3), [Sch. 4 para. 20\(3\)](#); S.I. 2014/93, [art. 3\(j\)\(vi\)](#)
- F65** S. 17(4A) inserted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), [Sch. 5 para. 1\(1\)](#) (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F66** Words in s. 17(4A) inserted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(2)(3), [Sch. 1 para. 4\(d\)\(i\)](#)
- F67** Words in s. 17(4A) substituted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(2)(3), [Sch. 1 para. 4\(d\)\(ii\)](#)
- F68** Words in s. 17(4A) substituted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(2)(3), [Sch. 1 para. 4\(d\)\(iii\)](#)

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- F69** S. 17(4A)(c)(i)(ii) substituted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(2)(3), **Sch. 1 para. 4(d)(iv)**
- F70** Words in s. 17(4A)(c)(i) substituted (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), **Sch. 1 para. 25(a)**
- F71** S. 17(4B) inserted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(2)(3), **Sch. 1 para. 4(e)**
- F72** Words in s. 17(5) inserted (E.W.) (13.3.2014 for specified purposes, 10.12.2014 in so far as not already in force) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 20(4)**; S.I. 2014/93, **art. 3(j)(vi)**
- F73** Words in s. 17(5) substituted (1.1.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(b)(2), **Sch. 5 para. 1(2)(a)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F74** Words in s. 17(5) repealed (1.1.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(b)(2), **Sch. 5 para. 1(2)(b)**, **Sch. 9 Pt. III(4)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F75** Words in s. 17(6) inserted (E.W.) (13.3.2014 for specified purposes, 10.12.2014 in so far as not already in force) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 20(5)(a)**; S.I. 2014/93, **art. 3(j)(vi)**
- F76** Words in s. 17(6) substituted (1.1.2001) by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 86(1)(b)(2), **Sch. 5 para. 1(3)** (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(i)
- F77** Words in s. 17(6) substituted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(2)(3), **Sch. 1 para. 4(f)**
- F78** Word in s. 17(6) inserted (E.W.) (13.3.2014 for specified purposes, 10.12.2014 in so far as not already in force) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 20(5)(b)**; S.I. 2014/93, **art. 3(j)(vi)**
- F79** Words in s. 17(7) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 39**; S.I. 1999/527, art. 2(b), **Sch. 2** (with arts. 3-6)
- F80** Words in s. 17(7) substituted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(2)(3), **Sch. 1 para. 4(g)**
- F81** S. 17(8) inserted (1.7.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 284(2)**, 322(1) (with s. 313); S.I. 2005/1720, art. 2(15)(a)(b), **Sch. Pt. 2**
- F82** S. 17(9) added (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(2)(3), **Sch. 1 para. 4(h)**
- F83** S. 17(9) omitted (E.W.) (13.3.2014) by virtue of The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), **Sch. 1 para. 25(b)**
- F84** S. 17(10)(11) inserted (E.W.) (13.3.2014 for specified purposes, 10.12.2014 in so far as not already in force) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 20(6)**; S.I. 2014/93, **art. 3(j)(vi)**

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

## 18 Treatment of insignificant amounts.

- (1) Where an amount is required to be calculated in accordance with the provisions of sections 14(7), 15(1) or 17(2), (3) or (4) and, apart from this subsection, the amount so

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calculated is less than 0.5p, then, notwithstanding any other provision of this Act, that amount shall be taken to be zero, and other amounts so calculated shall be rounded to the nearest whole penny, taking 0.5p as nearest to the next whole penny above.

- (2) Where a guaranteed minimum pension is attributable in part to earnings factors for the period before the tax year 1988-89 and in part to earnings factors for that tax year or for that tax year and subsequent tax years, the pension shall be calculated by—
- (a) applying subsection (1) separately to the amount attributable to the period before the tax year 1988-89 and to the amount attributable to that and subsequent tax years, and
  - (b) aggregating the two amounts so calculated.

#### Commencement Information

II Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, art. 2

### 19 Discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts.

- (1) A transaction to which this section applies discharges the trustees or managers of an occupational pension scheme from their liability to provide for or in respect of any person guaranteed minimum pensions—
- (a) if it is carried out not earlier than the time when that person’s pensionable service terminates; and
  - (b) if and to the extent that it results in guaranteed minimum pensions for or in respect of that person being appropriately secured; and
  - (c) if and to the extent that the requirements set out in paragraph (a), (b) or (c) of subsection (5) are satisfied.
- (2) This section applies to the following transactions—
- (a) the taking out of a policy of insurance or a number of such policies;
  - (b) the entry into an annuity contract or a number of such contracts;
  - (c) the transfer of the benefit of such a policy or policies or such a contract or contracts.
- (3) In this section “appropriately secured” means secured by an appropriate policy of insurance or an appropriate annuity contract, or by more than one such policy or contract.
- (4) A policy of insurance or annuity contract is appropriate for the purposes of this section if—
- (a) the [<sup>F85</sup>insurer] with which it is or was taken out or entered into—
    - (i) is, or was at the relevant time, carrying on <sup>F86</sup>... long-term insurance business in the United Kingdom or any other [<sup>F87</sup>EEA state]; and
    - (ii) satisfies, or at the relevant time satisfied, prescribed requirements; and
  - (b) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed; and
  - (c) it contains or is endorsed with terms whose effect is that the amount secured by it may not be commuted except on conditions which satisfy such requirements as may be prescribed; and

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- (d) it satisfies such other requirements as may be prescribed.
- (5) The requirements referred to in subsection (1) are—
- (a) that the arrangement for securing the amount by means of the policy or contract was made—
- (i) at the written request of the earner or, if the earner has died, of the earner’s [<sup>F88</sup>widow, widower or surviving civil partner]; or
- (ii) with the consent of the earner or the [<sup>F89</sup>widow, widower or surviving civil partner] given in writing in a prescribed form;
- (b) that—
- (i) the case is one such as is mentioned in section 96(2); and
- (ii) the policy or contract only secures guaranteed minimum pensions;
- (c) that—
- (i) the case is not one such as is mentioned in section 96(2); and
- (ii) such conditions as may be prescribed are satisfied.
- (6) In subsection (4)(a), “the relevant time” means the time when the policy of insurance was taken out or the annuity contract was entered into or, as the case may be, when the benefit of the policy or contract was transferred.

<sup>F90</sup>(7) .....

#### Textual Amendments

- F85** Word in s. 19(4)(a) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **116(2)(a)**
- F86** Word in s. 19(4)(a)(i) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **116(2)(b)**
- F87** Words in s. 19(4)(a)(i) substituted (26.11.2007) by [The Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, 2, **Sch. para. 1(b)**
- F88** Words in s. 19(5)(a)(i) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), **Sch. 1 para. 5**
- F89** Words in s. 19(5)(a)(ii) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), **Sch. 1 para. 5**
- F90** S. 19(7) repealed (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **116(3)**

#### Modifications etc. (not altering text)

- C19** S. 19 applied (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\)](#), regs. 1, **58(5)(6)**

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

## 20 Transfer of accrued rights.

- (1) Regulations may prescribe circumstances in which and conditions subject to which—
- (a) a transfer of or a transfer payment in respect of—

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- (i) an earner’s accrued rights to guaranteed minimum pensions under a contracted-out scheme;
    - (ii) an earner’s accrued rights to pensions under an occupational pension scheme which is not contracted-out, to the extent that those rights derive from his accrued rights to guaranteed minimum pensions under a contracted-out scheme; or
    - (iii) the liability for the payment of guaranteed minimum pensions to or in respect of any person who has become entitled to them,  
may be made by an occupational pension scheme to another such scheme [F91, to a personal pension scheme or to an overseas arrangement];
  - (b) a transfer of or a transfer payment in respect of an earner’s accrued rights to guaranteed minimum pensions which are appropriately secured for the purposes of section 19 may be made to an occupational pension scheme [F92, a personal pension scheme or an overseas arrangement].
- (2) Any such regulations may be made so as to apply to earners who are not in employment at the time of the transfer.
  - (3) Regulations under subsection (1) may provide that any provision of this Part (other than sections 18, 19 and 43 to 45, and [F93 sections 31 and 33] so far as they apply to personal pension schemes) or of Chapter III of Part IV or Chapter II of Part V shall have effect, where there has been a transfer to which they apply, subject to such modifications as may be specified in the regulations.
  - (4) Regulations under subsection (1) shall have effect in relation to transfers whenever made unless they provide that they are only to have effect in relation to transfers which take place after they come into force.
  - (5) The power conferred by subsection (1) is without prejudice to the generality of section 182(2).
  - (6) In the provisions mentioned in subsection (3) “accrued rights”, in relation to an earner, means the rights conferring prospective entitlement under the scheme in question to the pensions to be provided for the earner and the earner’s [F94 widow, widower or surviving civil partner] in accordance with sections 13 and 17, and references to an earner’s accrued rights to guaranteed minimum pensions shall be construed accordingly.

#### Textual Amendments

- F91** Words in s. 20(1)(a) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), [Sch. 5 para. 2\(1\)\(a\)](#) (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(ii)
- F92** Words in s. 20(1)(b) substituted (1.1.2001) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(b)(2), [Sch. 5 para. 2\(1\)\(b\)](#) (with s. 83(6)); S.I. 2000/3166, art. 2(3)(b)(ii)
- F93** Words in s. 20(3) substituted (6.4.2012) by [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) \(No.2\) Order 2011 \(S.I. 2011/1730\)](#), arts. 1(2)(b), [5\(2\)](#)
- F94** Words in s. 20(6) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), [Sch. 1 para. 6](#)

#### Commencement Information

- II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

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**21 Commutation, surrender and forfeiture.**

- [<sup>F95</sup>(1) A scheme may, in such circumstances and subject to such restrictions and conditions as may be prescribed, provide for the payment of a lump sum instead of a pension required to be provided by the scheme in accordance with section 13 or 17.]
- (2) Neither section 13 nor section 17 shall preclude a scheme from providing for the earner’s or the earner’s [<sup>F96</sup>widow's, widower’s or surviving civil partner's] guaranteed minimum pension to be suspended or forfeited in such circumstances as may be prescribed.

**Textual Amendments**

**F95** S. 21(1) substituted (1.7.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 284\(1\), 322\(1\)](#) (with s. 313); S.I. 2005/1720, art. 2(15)(a)(b), Sch. Pt. 2

**F96** Words in s. 21(2) substituted (26.7.2005 for specified purposes, 5.12.2005 in so far as not already in force) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\), art. 1\(2\)\(3\), Sch. 1 para. 7](#)

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**Modifications etc. (not altering text)**

**C20** S. 21 applied (1.4.1998) by [The Local Government Pension Scheme \(Scotland\) Regulations 1998 \(S.I. 1998/366\), regs. 1, 58\(5\)\(6\)](#)

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**Commencement Information**

**I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

<sup>F97</sup>**22 Financing of benefits.**

.....

**Textual Amendments**

**F97** S. 22 repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\), s. 180\(1\), Sch. 5 para. 30, Sch. 7 Pt. III; S.I. 1997/664, art. 2\(3\), Sch. Pt. 2](#)

**23 Securing of benefits.**

- <sup>F98</sup>(1) .....
- (2) Subject to subsection (3), the scheme must contain a rule by which any liabilities of the scheme in respect of—
  - (a) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions;
  - (b) any such benefits as are excluded by section 13(6) from earners’ guaranteed minimum pensions;
  - (c) pensions and other benefits (whether or not within paragraph (a) or (b)) in respect of which entitlement to payment has already arisen; and
  - (d) state scheme premiums,
 are accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rule has taken effect.



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- (3) The rule may also accord priority, on a winding up occurring after an earner has attained normal pension age, to liabilities of the scheme in respect of pensions and other benefits to which—
- (a) he will be entitled on ceasing to be in employment, or
  - (b) the earner's [<sup>F99</sup>widow, widower or surviving civil partner] or any dependant of the earner's will be entitled on the earner's death.
- (4) Subsections [<sup>F100</sup>(2) and (3)] do not apply to public service pension schemes.
- <sup>F101</sup>(5) .....
- (6) Subsections (2) and (3) do not apply to schemes falling within any category or description prescribed as being exempt from the requirements of those subsections.
- (7) If the scheme provides for the payment out of any sum representing the surrender value of a policy of insurance taken out for the purposes of the scheme, it must make provision so that there may be no payment out in relation to guaranteed minimum pensions except in such circumstances as may be prescribed.

#### Textual Amendments

- F98** S. 23(1) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 31\(a\)](#), [Sch. 7 Pt. III](#); [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 2](#)
- F99** Words in s. 23(3)(b) substituted (5.12.2005) by [The Civil Partnership \(Contracted-out Occupational and Appropriate Personal Pension Schemes\) \(Surviving Civil Partners\) Order 2005 \(S.I. 2005/2050\)](#), art. 1(3), [Sch. 1 para. 8](#)
- F100** Words in s. 23(4) substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 31\(b\)](#); [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 2](#)
- F101** S. 23(5) repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 31\(a\)](#), [Sch. 7 Pt. III](#); [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 2](#)

#### Modifications etc. (not altering text)

- C21** S. 23(2)(3) excluded (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 31](#); [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 2](#)

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

#### <sup>F102</sup>24 Sufficiency of resources.

.....

#### Textual Amendments

- F102** S. 24 repealed (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 32](#), [Sch. 7 Pt. III](#); [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 2](#)

#### [<sup>F103</sup>24A Conversion of guaranteed minimum pension into other benefits: introduction

In this section and sections 24B to 24H—

*Status: Point in time view as at 22/04/2014.*

*Changes to legislation: Pension Schemes Act 1993, Chapter I is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the rules specified in sections 13(1)(a) and (b) and 17(1) are referred to as the “guaranteed minimum pension rules”,
- (b) “GMP conversion” means amendment of the scheme in relation to an earner so that it no longer contains the guaranteed minimum pension rules,
- (c) a “GMP-converted scheme” is a scheme which has been subject to GMP conversion,
- (d) “the conversion date” means the date on which that amendment takes effect,
- (e) “the pre-conversion benefits” means the benefits provided under the scheme immediately before the conversion date (disregarding money purchase benefits),
- (f) “the post-conversion benefits” means the benefits which are provided under the converted scheme (disregarding money purchase benefits),
- (g) “the converted scheme” means the scheme as it has effect immediately after conversion, and
- (h) “the trustees” in relation to a scheme means the trustees, managers or other persons responsible under the scheme for effecting amendments of it.

#### **Textual Amendments**

**F103** Ss. 24A-24H inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(3), 30(2)(a); S.I. 2009/406, art. 2(a)(b)

## **24B The conversion conditions**

- (1) This section specifies the conditions referred to in sections 13(1A) and 17(1A) (for exemption from the requirement to guarantee a minimum pension).
- (2) Condition 1 is that the post-conversion benefits must be actuarially at least equivalent to the pre-conversion benefits.
- (3) Condition 2 is that if the earner was entitled immediately before the conversion date to the payment of a pension under the scheme, the converted scheme does not provide for a reduction of, or have the effect of reducing, the amount of that pension immediately after conversion.
- (4) Condition 3 is that the post-conversion benefits must not include money purchase benefits, apart from any money purchase benefits provided under the scheme immediately before the conversion date.
- (5) Condition 4 is that the converted scheme provides survivors' benefits in accordance with section 24D in such circumstances, and during such periods, as are prescribed by regulations.
- (6) Condition 5 is that the procedural requirements of section 24E have been complied with.
- (7) In applying these conditions to a scheme in respect of an earner—
  - (a) it is immaterial whether or not on the conversion date the scheme was also converted in respect of other earners, and
  - (b) it is immaterial (except for Condition 2) whether or not on the conversion date the earner was entitled to the payment of a pension under the scheme.

*Status: Point in time view as at 22/04/2014.*

*Changes to legislation: Pension Schemes Act 1993, Chapter I is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F103** Ss. 24A-24H inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(3), 30(2)(a); S.I. 2009/406, art. 2(a)(b)

### 24C Actuarial equivalence

Regulations may make provision for determining actuarial equivalence for the purpose of Condition 1 of section 24B.

#### Textual Amendments

**F103** Ss. 24A-24H inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(3), 30(2)(a); S.I. 2009/406, art. 2(a)(b)

### 24D Survivors' benefits

- (1) This section specifies the benefits mentioned in Condition 4 of section 24B.
  - (2) The first benefit is that if the earner <sup>F104</sup>is a man married to a woman or a woman married to a woman in a relevant gender change case, and the earner] dies (whether before or after attaining normal pension age) leaving a widow, she is entitled to a pension of at least half the value of the pension to which the earner would have been entitled by reference to employment during the period—
    - (a) beginning with 6th April 1978, and
    - (b) ending with 5th April 1997.
  - (3) The second benefit is that if the earner <sup>F105</sup>is a married woman (other than in a relevant gender change case), a man married to a man, or a civil partner, and the earner] dies (whether before or after attaining normal pension age) leaving a widower <sup>F106</sup>, widow] or surviving civil partner, he or she is entitled to a pension of at least half the value of the pension to which the earner would have been entitled by reference to employment during the period—
    - (a) beginning with 6th April 1988, and
    - (b) ending with 5th April 1997.
- <sup>F107</sup>[ In relation to an earner who is a woman, a reference in this section to a relevant gender (4) change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.
- (5) This section is subject to regulations under section 38A.]

#### Textual Amendments

**F103** Ss. 24A-24H inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(3), 30(2)(a); S.I. 2009/406, art. 2(a)(b)

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- F104** Words in s. 24D(2) inserted (E.W.) (13.3.2014 for specified purposes) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\), Sch. 4 para. 21\(2\)](#); S.I. 2014/93, art. 3(j)(vi)
- F105** Words in s. 24D(3) inserted (E.W.) (13.3.2014 for specified purposes) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\), Sch. 4 para. 21\(3\)\(a\)](#); S.I. 2014/93, art. 3(j)(vi)
- F106** Word in s. 24D(3) inserted (E.W.) (13.3.2014 for specified purposes) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\), Sch. 4 para. 21\(3\)\(b\)](#); S.I. 2014/93, art. 3(j)(vi)
- F107** S. 24D(4)(5) inserted (E.W.) (13.3.2014 for specified purposes) by [Marriage \(Same Sex Couples\) Act 2013 \(c. 30\), s. 21\(3\), Sch. 4 para. 21\(4\)](#); S.I. 2014/93, art. 3(j)(vi)

## 24E Procedural requirements

- (1) This section specifies the procedural requirements that must be complied with in order to satisfy Condition 5 of section 24B.
- (2) The employer in relation to the scheme must consent to the GMP conversion in advance.
- (3) The trustees must take all reasonable steps to—
  - (a) consult the earner in advance, and
  - (b) notify all members, and survivors, affected by the GMP conversion before, or as soon as is reasonably practicable after, the conversion date.
- (4) The Commissioners for Her Majesty's Revenue and Customs must be notified on or before the conversion date—
  - (a) that the GMP conversion will occur or has occurred, and
  - (b) that it affects the earner.

### Textual Amendments

- F103** [Ss. 24A-24H](#) inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by [Pensions Act 2007 \(c. 22\), ss. 14\(3\), 30\(2\)\(a\)](#); S.I. 2009/406, art. 2(a)(b)

## 24F Transfer out

- (1) Regulations may prescribe—
  - (a) restrictions on the transfer of the earner's accrued rights under a GMP-converted scheme;
  - (b) conditions which must be complied with on the transfer of the earner's accrued rights under a GMP-converted scheme.
- (2) Section 20(2) and (5) shall apply to regulations under this section.
- (3) Where a member of a non-GMP-converted scheme makes an application under section 95(1), the trustees may with his consent adjust any guaranteed cash equivalent so as to reflect rights that would have accrued if the scheme had been subject to GMP conversion in accordance with Conditions 1 to 4 of section 24B.

### Textual Amendments

- F103** [Ss. 24A-24H](#) inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by [Pensions Act 2007 \(c. 22\), ss. 14\(3\), 30\(2\)\(a\)](#); S.I. 2009/406, art. 2(a)(b)

*Status: Point in time view as at 22/04/2014.*

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## 24G Powers to amend schemes

- (1) The trustees of an occupational pension scheme may by resolution modify it so as to effect GMP conversion (whether in relation to present earners, pensioners or survivors) in accordance with the conditions in section 24B.
- (2) The subsisting rights provisions within the meaning of section 67 of the Pensions Act 1995 (c. 26) shall not apply to a power conferred by an occupational pension scheme to modify the scheme in so far as the power enables GMP conversion in accordance with the conditions in section 24B.
- (3) Where a scheme is amended to effect GMP conversion the trustees may include other amendments which they think are necessary or desirable as a consequence of, or to facilitate, the GMP conversion.
- (4) Where an occupational pension scheme is being wound up, the trustees may, before the winding up is completed, adjust rights under the scheme so as to reflect what would have happened if the scheme had been subject to GMP conversion in accordance with Conditions 1 to 4 of section 24B.
- (5) In the application of section 24E by virtue of subsection (1) above, a reference to the earner includes a reference to a pensioner or survivor whose pension is subjected to GMP conversion.

### Textual Amendments

**F103** Ss. 24A-24H inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(3), 30(2)(a); S.I. 2009/406, art. 2(a)(b)

## 24H Enforcement of GMP conversion conditions

- (1) If the Regulatory Authority thinks that the conditions of section 24B have not been satisfied in relation to an amendment, modification or adjustment effected in accordance with any of sections 13(1A), 17(1A), 24F and 24G, the Regulatory Authority may make an order declaring the amendment, modification or adjustment void—
  - (a) in respect of a specified person or class of person,
  - (b) to a specified extent, and
  - (c) as from a specified time.
- (2) Where the Regulatory Authority makes an order under subsection (1) it may—
  - (a) require the trustees of the scheme concerned to take specified steps;
  - (b) declare that specified action of the trustees shall not be treated as a contravention of the scheme if it would not have been a contravention if the order under subsection (1) had not been made.
- (3) An order may be made under subsection (1) before or after the amendment, modification or adjustment takes effect.
- (4) If the Regulatory Authority thinks that the process of effecting a GMP conversion of a scheme has been commenced and that a relevant condition of section 24B is not being complied with, or may not be complied with, the Regulatory Authority may by order—

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- (a) prohibit the taking of further steps in the GMP conversion (whether generally or in relation to specified steps), and
  - (b) require the trustees of the scheme to take specified steps before resuming the process of GMP conversion.
- (5) Section 10 of the Pensions Act 1995 (civil penalties) shall apply to a trustee who has failed to take all reasonable steps to secure compliance with the conditions of section 24B in relation to an amendment, modification or adjustment effected in accordance with any of sections 13(1A), 17(1A), 24F and 24G.]

#### Textual Amendments

**F103** Ss. 24A-24H inserted (1.3.2009 for specified purposes, 6.4.2009 in so far as not already in force) by Pensions Act 2007 (c. 22), ss. 14(3), 30(2)(a); S.I. 2009/406, art. 2(a)(b)

#### *Discretionary requirements*

### 25 Power for Board to impose conditions as to investments and resources.

<sup>F108</sup>(1) . . . . .

- [<sup>F109</sup>(2) A salary related contracted-out scheme must, in relation to any earner’s service before the principal appointed day, comply with any requirements prescribed for the purpose of securing that—
- (a) the [<sup>F110</sup>Inland Revenue are] kept informed about any matters affecting the security of the minimum pensions guaranteed under the scheme, and
  - (b) the resources of the scheme are brought to and are maintained at a level satisfactory to the [<sup>F111</sup>Inland Revenue]]

<sup>F112</sup>(3) . . . . .

#### Textual Amendments

**F108** S. 25(1) repealed (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 33(a), Sch. 7 Pt. III; S.I. 1997/664, art. 2(3), Sch. Pt. 2

**F109** S. 25(2) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 33(b); S.I. 1996/778, art. 2(5)(a), Sch. Pt. 5; S.I. 1997/664, art. 2(3), Sch. Pt. 2

**F110** Words in s. 25(2)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), Sch. 1 para. 40(a); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

**F111** Words in s. 25(2)(b) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), Sch. 1 para. 40(b); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

**F112** S. 25(3) repealed (6.4.1997) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 33(a), Sch. 7 Pt. III; S.I. 1997/664, art. 2(3), Sch. Pt. 2

#### Commencement Information

**I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, art. 2

*Status: Point in time view as at 22/04/2014.*

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*Requirements for certification of occupational and personal money purchase schemes*

**F113 25A Requirements for schemes with members with protected rights**

.....

**Textual Amendments**

**F113** S. 25A repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(2)(b)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

**F114 26 Persons who may establish scheme.**

.....

**Textual Amendments**

**F114** S. 26 repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(3)(b)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

**F115 27 Identification and valuation of protected rights.**

.....

**Textual Amendments**

**F115** S. 27 repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(3)(c)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

**F116 27A Requirements in relation to giving effect to protected rights**

.....

**Textual Amendments**

**F116** S. 27A repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(2)(b)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

**F117 28 Ways of giving effect to protected rights.**

.....

**Textual Amendments**

**F117** Ss. 28-29 repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 11, **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)

*Status: Point in time view as at 22/04/2014.*

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**F117 28A Requirements for interim arrangements**

.....

**Textual Amendments**

**F117 Ss. 28-29** repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 11, **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)

**F117 28B Information about interim arrangements**

.....

**Textual Amendments**

**F117 Ss. 28-29** repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 11, **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)

**F117 29 The pension and annuity requirements.**

.....

**Textual Amendments**

**F117 Ss. 28-29** repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by Pensions Act 2007 (c. 22), ss. 15(4), 27(7), 30(2)(b), Sch. 4 para. 11, **Sch. 7 Pt. 6** (with Sch. 4 Pt. 3); S.I. 2011/1267, art. 2(a)

**F118 30 Securing of liability for protected rights.**

.....

**Textual Amendments**

**F118 S. 30** repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(3)(d)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

**31 Investment and resources of schemes.**

**F119** (1) .....

(2) [<sup>F120</sup>A scheme which was an appropriate scheme or a money purchase contracted-out scheme immediately before the abolition date] must comply with such requirements as may be prescribed as regards the part—

- (a) of any payment that is made to the scheme by or on behalf of a member of the scheme;



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- (b) of any income or capital gain arising from the investment of such a payment; or
- (c) of the value of rights under the scheme,
- that may be used—
- (i) to defray the administrative expenses of the scheme;
- (ii) to pay commission; or
- (iii) in any other way which does not result in the provision of benefits for or in respect of members.
- (3) Subject to subsection (4)—
- (a) in the case of an occupational pension scheme, all minimum payments [<sup>F121</sup>and payments under section 42A(3)] and any payments made by the [<sup>F122</sup>Inland Revenue] under section 7 of the <sup>M5</sup>Social Security Act 1986, and
- (b) in the case of a personal pension scheme, all minimum contributions, which are paid to a scheme in respect of one of its members must be applied so as to provide money purchase benefits for or in respect of that member, except so far as they are used—
- (i) to defray the administrative expenses of the scheme; or
- (ii) to pay commission.
- (4) If regulations are made under subsection (2), the payments mentioned in paragraph (a) of subsection (3) and the contributions mentioned in paragraph (b) of that subsection may be used in any way which the regulations permit, but not in any way not so permitted except to provide money purchase benefits for or in respect of the member.
- [<sup>F123</sup>(5) Any minimum contributions required by reason of this section to be applied so as to provide money purchase benefits for or in respect of a member of a scheme must be so applied in the prescribed manner and within the prescribed period.]

#### Textual Amendments

- F119** S. 31(1) repealed (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), Sch. 5 para. 36(a), **Sch. 7 Pt. III**; S.I. 1996/1412, art. 2(2), **Sch. Pt. II**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**
- F120** Words in s. 31(2) substituted (6.4.2012) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) Order 2011 (S.I. 2011/1730), arts. 1(2)(b), **5(3)**
- F121** Words in s. 31(3)(a) inserted (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 36(b)**; S.I. 1996/1412, art. 2(2), Sch. Pt. 2; S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F122** Words in s. 31(3)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 43**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F123** S. 31(5) added (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 36(c)**; S.I. 1996/1412, art. 2(2); S.I. 1997/664, art. 2(3), Sch. Pt. 2

#### Commencement Information

- II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

#### Marginal Citations

- M5** 1986 c. 50.

*Status: Point in time view as at 22/04/2014.*

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<sup>F124</sup>**32 Suspension or forfeiture.**

.....

**Textual Amendments**  
**F124** S. 32 repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(3)(e)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

<sup>F125</sup>**32A Discharge of protected rights on winding up: insurance policies**

.....

**Textual Amendments**  
**F125** S. 32A repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(2)(b)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

**33 Tax requirements to prevail over [<sup>F126</sup>requirements of section 31].**

Nothing in [<sup>F127</sup>section 31] shall be taken to prejudice any requirements with which [<sup>F128</sup>a registered scheme must comply under Part 4 of the Finance Act 2004].

**Textual Amendments**  
**F126** Words in s. 33 sidenote substituted (6.4.2012) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) Order 2011 (S.I. 2011/1730), arts. 1(2)(b), **5(4)(a)**  
**F127** Words in s. 33 substituted (6.4.2012) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) Order 2011 (S.I. 2011/1730), arts. 1(2)(b), **5(4)(b)**  
**F128** Words in s. 33 substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **7(5)**

**Commencement Information**  
**I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

<sup>F129</sup>**33A Appropriate schemes: “Blowing the whistle”**

.....

**Textual Amendments**  
**F129** S. 33A repealed (6.4.2012) by Pensions Act 2008 (c. 30), ss. 106(1)(3)(f)(4), 149(1), **Sch. 11 Pt. 3**; S.I. 2011/1266, art. 2(c)

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*Cancellation, variation, surrender and refusal of certificates*

**34 Cancellation, variation, surrender and refusal of certificates.**

[<sup>F130</sup>(1) Regulations shall provide for the cancellation, variation or surrender of a contracting-out certificate, or the issue of a new certificate—

- (a) on any change of circumstances affecting the treatment of an employment as contracted-out employment; or
- (b) where the certificate was issued on or after the principal appointed day, if any employer of persons in the description of employment to which the scheme in question relates, or the actuary of the scheme, fails to provide HMRC, at prescribed intervals, with such documents as may be prescribed for the purpose of verifying that the conditions of section 9(2B) are satisfied.]

(2) Regulations may enable the [<sup>F131</sup>Inland Revenue] to cancel or vary a contracting-out certificate where—

- (a) [<sup>F132</sup>they have] reason to suppose that any employment to which it relates ought not to be treated as contracted-out employment in accordance with the certificate; and
- (b) the employer does not show that it ought to be so treated.

(3) Where [<sup>F133</sup>by or by virtue of any provision of this Part the contracting-out of a scheme in relation to an employment depends on the satisfaction of a particular condition] the continued contracting-out of the scheme <sup>F134</sup>... shall be dependent on continued satisfaction of the condition; and if the condition ceases to be satisfied, that shall be a ground (without prejudice to any other) for the cancellation or variation of the contracting-out <sup>F135</sup>... certificate.

(4) A contracting-out certificate in respect of any employment may be withheld or cancelled by the [<sup>F131</sup>Inland Revenue] if [<sup>F136</sup>they consider] that there are circumstances which make it inexpedient that the employment should be or, as the case may be, continue to be, contracted-out employment by reference to the scheme, notwithstanding that the relevant scheme is one that [<sup>F136</sup>they] would otherwise treat as proper to be contracted-out in relation to all earners in that employment.

<sup>F137</sup>(5) .....

<sup>F138</sup>(6) .....

[<sup>F139</sup>(7) Without prejudice to the previous provisions of this section, failure of a scheme to comply with any requirements prescribed by virtue of section 25(2) shall be a ground on which the [<sup>F131</sup>Inland Revenue] may, in respect of any employment to which the scheme relates, cancel a contracting-out certificate].

(8) Except in prescribed circumstances, no cancellation, variation or surrender of a contracting-out certificate <sup>F140</sup>... shall have effect from a date earlier than that on which the cancellation, variation or surrender is made.

[<sup>F141</sup>(9) A reference in this section to a contracting-out certificate does not include a reference to a contracting-out certificate issued in respect of a money purchase contracted-out scheme.]

*Status: Point in time view as at 22/04/2014.*

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### Textual Amendments

- F130** S. 34(1) substituted (26.9.2007 for specified purposes, 6.4.2012 in so far as not already in force, that being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), [Sch. 4 para. 15\(2\)](#) (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F131** Words in s. 34 substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 45\(2\)](#); S.I. 1999/527, art. 2(b), [Sch. 2](#) (with arts. 3-6)
- F132** Words in s. 34(2)(a) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 45\(3\)](#); S.I. 1999/527, art. 2(b), [Sch. 2](#) (with arts. 3-6)
- F133** Words in s. 34(3) substituted for s. 34(3)(a)(b) (26.9.2007 for specified purposes) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), [Sch. 4 para. 15\(3\)\(a\)](#) (with [Sch. 4 Pt. 3](#))
- F134** Words in s. 34(3) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 27(7), 30(2)(b), [Sch. 4 para. 15\(3\)\(b\)](#), [Sch. 7 Pt. 6](#) (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F135** Words in s. 34(3) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 27(7), 30(2)(b), [Sch. 4 para. 15\(3\)\(c\)](#), [Sch. 7 Pt. 6](#) (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F136** Words in s. 34(4) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 45\(4\)](#); S.I. 1999/527, art. 2(b), [Sch. 2](#) (with arts. 3-6)
- F137** S. 34(5) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 27(7), 30(2)(b), [Sch. 4 para. 15\(4\)](#), [Sch. 7 Pt. 6](#) (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F138** S. 34(6) repealed (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 37\(b\)](#), [Sch. 7 Pt. III](#); S.I. 1996/778, art. 2(5)(a), [Sch. Pt. 5](#); S.I. 1997/664, art. 2(3), [Sch. Pt. 2](#)
- F139** S. 34(7) substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 37\(c\)](#); S.I. 1996/778, art. 2(5)(a), [Sch. Pt. 5](#); S.I. 1997/664, art. 2(3), [Sch. Pt. 2](#)
- F140** Words in s. 34(8) repealed (6.4.2012 being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 27(7), 30(2)(b), [Sch. 4 para. 15\(5\)](#), [Sch. 7 Pt. 6](#) (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)
- F141** S. 34(9) inserted (26.9.2007 for specified purposes, 6.4.2012 in so far as not already in force, that being "the abolition date" for the purposes of s. 15(1) of the amending Act) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b)(3), [Sch. 4 para. 15\(6\)](#) (with [Sch. 4 Pt. 3](#)); S.I. 2011/1267, art. 2(a)

### Modifications etc. (not altering text)

- C22** S. 34(2) extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), [12\(3\)](#), 13(2), 14
- C23** S. 34(8) extended (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), [12\(3\)](#), 13(2), 14

### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

## 35 Surrender and cancellation of contracting-out certificates: issue of further certificates.

- (1) This section applies in any case where—

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- (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board; and
  - (b) at any time before the end of the period of 12 months beginning with the date of the surrender or cancellation, that or any connected employer makes an election under section 11 in respect of any employment which was specified by virtue of section 7(2)(a) in the first certificate, with a view to the issue of a further contracting-out certificate.
- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme which would be specified in the further certificate if it were issued.
- (3) The Board shall not give effect to the election referred to in subsection (1) by issuing a further certificate unless they consider that, in all the circumstances of the case, it would be reasonable to do so.
- (4) Regulations may make such supplemental provision in relation to cases falling within this section as the Secretary of State considers necessary or expedient.
- (5) For the purposes of subsection (1)—
- (a) an employment (“the second employment”) in respect of which an election of the kind referred to in subsection (1)(b) has been made; and
  - (b) an employment (“the first employment”) which was specified by virtue of section 7(2)(a) in the first certificate,
- shall be treated as one employment if, in the opinion of the Board—
- (i) they are substantially the same, however described; or
  - (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.
- (6) Regulations shall prescribe the cases in which employers are to be treated as connected for the purposes of this section.

#### **Modifications etc. (not altering text)**

**C24** Ss. 35 36 modified (temp.) (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **75**

#### **Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

### **36 Surrender and cancellation of contracting-out certificates: cancellation of further certificates.**

- (1) This section applies in any case where—
- (a) a contracting-out certificate (“the first certificate”) has been surrendered by an employer or cancelled by the Board;
  - (b) a further contracting-out certificate (“the further certificate”) has been issued, after the surrender or cancellation of the first certificate but before the end of the period of 12 months beginning with the date of the surrender or cancellation, in respect of any employment which was specified by virtue of section 7(2)(a) in the first certificate; and

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- (c) the Board have formed the opinion that had they been aware of all the circumstances of the case at the time when the further certificate was issued they would have been prevented by section 35(3) from issuing it.
- (2) This section applies whether or not the scheme specified in the first certificate in relation to the employment concerned is the same as the scheme specified in the further certificate.
- (3) The Board may, before the end of the period of 12 months beginning with the date on which the further certificate was issued, cancel that certificate.
- (4) Where a contracting-out certificate is cancelled under subsection (3) the provisions of this Act and of any regulations and orders made under it shall have effect as if the certificate had never been issued.
- (5) Regulations may make such supplemental provision in relation to cases falling within this section as the Secretary of State considers necessary or expedient.
- (6) Without prejudice to subsection (5), regulations may make provision, in relation to any case in which the Board have cancelled a contracting-out certificate under subsection (3), preventing the recovery by the employer concerned (whether by deduction from emoluments or otherwise) of such arrears which he is required to pay to the Secretary of State in respect of an earner’s liability under section 6(3) of the <sup>M6</sup>Social Security Contributions and Benefits Act 1992 as may be prescribed.
- (7) For the purposes of subsection (1)—
- (a) an employment (“the second employment”) in respect of which a further contracting-out certificate of the kind referred to in subsection (1)(b) has been issued; and
- (b) an employment (“the first employment”) which was specified by virtue of section 7(2)(a) in the first certificate,
- shall be treated as one employment if, in the opinion of the Board—
- (i) they are substantially the same, however described; or
- (ii) the first employment falls wholly or partly within the description of the second employment or the second employment falls wholly or partly within the description of the first employment.

**Modifications etc. (not altering text)**

**C24** Ss. 35 36 modified (temp.) (6.4.1997) by [Occupational Pension Schemes \(Contracting-out\) Regulations 1996 \(S.I. 1996/1172\)](#), regs. 1(1), **75**

**Commencement Information**

**I1** Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86](#), **art. 2**

**Marginal Citations**

**M6** 1992 c. 4.

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### *Alteration of scheme rules after certification*

#### [<sup>F142</sup>37 Alteration of rules of contracted-out schemes.

- (1) Except in prescribed circumstances, the rules of a [<sup>F143</sup>salary related] contracted-out scheme cannot be altered unless the alteration is of a prescribed description.
- (2) Regulations made by virtue of subsection (1) may operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.
- (3) References in this section to a [<sup>F144</sup>salary related] contracted-out scheme include a scheme which has ceased to be contracted-out so long as any person is entitled to receive, or has accrued rights to, any benefits under the scheme attributable to a period when the scheme was contracted-out.]
- (4) [<sup>F145</sup>The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person who is so entitled by virtue of a qualifying relationship only in such cases as may be prescribed.]
- [<sup>F145</sup>(5) For that purpose a person is entitled to receive benefits by virtue of a qualifying relationship if the person is so entitled by virtue of being—
  - (a) the widower of a female earner;
  - (b) the widower of a male earner;
  - (c) the widow of a female earner, except where it is a relevant gender change case; or
  - (d) the survivor of a civil partnership with an earner.
- (6) In relation to a widow of a female earner, the reference in subsection (5)(c) to a relevant gender change case is a reference to a case where—
  - (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.
- (7) This section is subject to regulations under section 38A.]

#### **Textual Amendments**

- F142** S. 37 substituted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by Pensions Act 1995 (c. 26), s. 180(1), **Sch. 5 para. 39**; S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**; S.I. 1997/664, art. 2(3), **Sch. Pt. II**
- F143** Words in s. 37(1) inserted (6.4.2012) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) Order 2011 (S.I. 2011/1730), arts. 1(2)(b), **5(5)(a)**
- F144** Words in s. 37(3) inserted (6.4.2012) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) Order 2011 (S.I. 2011/1730), arts. 1(2)(b), **5(5)(b)**
- F145** S. 37(4)-(7) substituted for s. 37(4) (E.W.) (13.3.2014 for specified purposes) by Marriage (Same Sex Couples) Act 2013 (c. 30), s. 21(3), **Sch. 4 para. 22(2)**; S.I. 2014/93, art. 3(j)(vi)
- F146** Words in s. 37(4) inserted (5.12.2005) by The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (S.I. 2005/2050), art. 1(3), **Sch. 1 para. 12**

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**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

**<sup>F147</sup>38 Alteration of rules of appropriate schemes.**

.....

**Textual Amendments**

**F147** S. 38 omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) \(No.2\) Order 2011 \(S.I. 2011/1730\)](#), arts. 1(2)(b), **5(6)**

*General regulations as to administration of Part III*

**39 General power to make regulations.**

Schedule 2 shall have effect for enabling regulations to be made in relation to the operation and administration of this Part, and Part I of that Schedule has effect as respects occupational pension schemes<sup>F148</sup> ...

**Textual Amendments**

**F148** Words in s. 39 omitted (6.4.2012) by virtue of [The Pensions Act 2008 \(Abolition of Protected Rights\) \(Consequential Amendments\) \(No.2\) Order 2011 \(S.I. 2011/1730\)](#), arts. 1(2)(b), **5(7)**

**Commencement Information**

**II** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**



**Status:**

Point in time view as at 22/04/2014.

**Changes to legislation:**

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